

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MANUEL L. BOJORQUEZ,) NO. CV 11-4324-JAK (MAN)
12)
13) Petitioner,) ORDER ACCEPTING FINDINGS
14) v.) AND RECOMMENDATIONS OF
15) WARDEN RANDY GROUNDS,) OF UNITED STATES MAGISTRATE
16) Respondent.)
17)

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition
19 for Writ of Habeas Corpus ("Petition"), all of the records herein, the
20 Report and Recommendation of United States Magistrate Judge ("Report"),
21 and Petitioner's Objections to the Report. The Court has conducted a *de*
22 *novo* review of those portions of the Report to which objections have
23 been stated in writing.

24 The Court notes that, in his Objections, Petitioner has raised new
25 factual allegations and attached documents that were not included with
26 the Petition. A district court has discretion, but is not required, to
27 consider evidence or claims presented for the first time in objections
28 to a report and recommendation. See Brown v. Roe, 279 F.3d 742, 744-45

1 (9th Cir. 2002); United States v. Howell, 231 F.3d 615, 621-22 (9th Cir.
2 2000). The Court has exercised its discretion to consider the
3 additional allegations and exhibits presented in and with the
4 Objections. Having done so, the Court accepts the findings and
5 recommendations set forth in the Report.

6
7 Petitioner complains that the Magistrate Judge erred in concluding
8 that Ground One of the Petition is unexhausted based on the sworn
9 allegations of the Petition, which indicate that Ground One is
10 unexhausted. Petitioner asserts that his allegations in the Petition
11 were mistaken and that, in fact, he fairly presented Ground One to all
12 three state courts. Even assuming, *arguendo*, that Ground One may be
13 exhausted, the claim nonetheless must be denied for the reasons set
14 forth in the Report at pages 6-7, because it is not cognizable on
15 federal habeas review. Petitioner's remaining new allegations and
16 documents also do not establish any error in the Report.

17
18 Accordingly, IT IS ORDERED that federal habeas relief is denied and
19 Judgment shall be entered dismissing this action with prejudice.

20
21 LET JUDGMENT BE ENTERED ACCORDINGLY.

22
23 DATED: July 18, 2011.

24
25 

26 _____
JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE